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Response dated January 2, 2007
Final Office Action dated November 1, 2006

REMARKS/ARGUMENTS

Claims 1-23 are pending in the application. Claims 1-23 are rejected. Claims 1-3, 5, 8-10, 12, 15-20, 22 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,681,390 (hereinafter Fiske) in view of U.S. Patent 6,438,748 (hereinafter Gard). Claims 4, 11 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fiske in view of Gard and further in view of U.S. Patent No. 5,974,454 (hereinafter Apfel). Claims 6, 7, 13 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fiske in view of Gard and further in view of U.S. Patent No. 6,493,594 (hereinafter Kraml). Claim 1 is amended to bring it into better form.

First, Applicants agrees with the Office Action's assertion that Fiske fails to describe validating the performance of an upgraded first software component by translating messages originating at the first software component from an upgraded version format to a current version format. *See* Office Action dated 11/1/2006, paragraph 4.

Gard generally teaches converting a message from a format compatible with an older version of software to a format compatible with an upgraded version of the software – "according to the present invention it is possible to convert messages according to an upgraded system." *See* Gard, column 2, lines 21-22. An aspect of Gard consists of maintaining a list of which software units have been upgraded and which have not. The list is used to determine whether or not a message needs to be converted in order to be compatible with a particular software unit. *See* Gard column 8, lines 37-41.

The Office action specifically quotes column 8, lines 37-41: "...to determine for each message whether a conversion from an old to a new format...a conversion task...from a not yet

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updated software unit...." The Office Action asserts that this disclosure teaches the following

limitation of applicants' independent claim 1:

> validating the performance of the upgraded first software component, said
> validating comprising translating messages originating at the first software
> component from an upgraded version format to a current version format.

This section cited in the Office Action, however, does not teach, suggest, or disclose using the

conversion for the purpose of *validating* the performance of the upgrade. In fact, Gard does not

appear to teach any sort of validation technique. Gard only teaches determining whether a

message needs to be converted from an old format to a new format (or vice versa) in order to

achieve compatibility so that the upgrade process can take place without disturbing system

performance. *See* Abstract and column 9, lines 7-11.

The Office Action further cites to column 6, lines 10-50. *See* Office Action dated

11/1/2006, paragraph 7. Specifically, it states the section of Gard teaches an important aspect of

the invention is to provide an efficient approach for the upgrade of messages in addition to the

upgrade of software and internal data. *See* column 6, lines 12-16. Applicants submit upgrading

messages or upgrading software is not the same as validating the performance of the upgraded

first software component by *translating messages originating at the first software component*

from an upgraded version format to a current version format.

Moreover, it is important to note that any conversion of messages described in Gard is

not for the purpose of verification. Column 6, lines 25-27 (from the cited section) state: "As

shown in FIG. 6, the conversion of messages may either be due to a change of the source code of

a sending software unit or the target code of a software unit or both." Therefore, the conversion

of messages in the Gard reference is due to a change in the source code of a software unit for the

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target code of software unit. It is not related to the upgrading of a software component and validating the performance thereof. Moreover, Applicants submit nowhere in the cited section (or the Gard reference as a whole) is the description of validating the performance by *translating messages originating at the first software component from an upgraded version format to a current version format* (e.g., as described in the embodiment of claim 1).

The Office Action further cites column 7, lines 22-45. The cited section describes message conversion necessary to an upgrade of a software processing system. Column 7, lines 30-35 state: "[a]s will be explained in more detail in the following, *an upgrade of the system may also lead to the insertion of new messages therein, so that the overall output of the message conversion apparatus 34 consists not only of converted messages but also of newly initialized messages, as shown in FIG. 8." (emphasis added)* Nowhere in the cited section is the description of the upgrading of a software component and *validating* the performance thereof. Moreover, Applicants submit similar to the cited section above, this cited section fails to describe validating the performance of a software component by translating messages originating at the first software component from an upgraded version format to a current version format (e.g., as described in the embodiment of claim 1).

Finally, the Office Action concludes by stating: "[t]hus, Gard does teach using the conversion [of messages] for the purpose of validating the performance of the upgrade." *See* id. Applicants submit that merely stating that a reference describes conversion of messages for the purpose of validating the performance of the upgrade is inadequate. In order to support a proper rejection of claim 1, the Office Action must cite a reference that teaches validating the

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performance by *translating messages originating at the first software component from an upgraded version format to a current version format* (as recited in claim 1).

Additionally, the Office Action cites to Gard column 2, lines 5-9 as providing a motivation to combine, but the Office action does not properly characterize the teachings of this section. The section of Gard cited by the Office Action states that "the object of the invention is to achieve a smooth upgrade of software in computer based systems." The reference, however, teaches that this goal is accomplished by upgrading the system while it is running, as opposed to other options such as shutting the system down or taking the system off-line in order to perform the upgrade. Nowhere does Gard teach that a "smooth" upgrade is achieved through any sort of validation technique. Therefore, the Office Action does not present a proper motivation to combine.

The Office Action asserts Gard teaches that a main object of his invention is to achieve a smooth upgrade of software by providing an interface for message conversion information that describes at least one message being converted into a new representation for the updated software processing system. Therefore, there is proper motivation to combine these references. However, as described above, the Gard reference teaches the conversion of messages due to a change in the source code of a software unit for the target code of software unit, not the upgrading of a software component and validating the performance thereof. *See* column 6, lines 25-27. Nowhere in the cited section (or the Gard reference as a whole) is the description of anything related to *validating* the performance of an upgraded software component by *translating messages originating at the first software component from an upgraded version*

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format to a current version format. Therefore, Applicants maintain no motivation to combine exits.

Accordingly, for at least all the reasons presented, Applicants assert that independent claim 1 is not rendered obvious by Fiske in view of Gard, or by any other reference or combination of references cited in the Office Action. Applicants further assert that independent claims 9 and 18 contain limitations similar to claim 1, and are, therefore, also allowable for at least all of the same reasons. Dependent claims 2-8, 10-17, and 19-23 are allowable as depending from allowable independent claims. Applicants respectfully request that the rejections under 35 U.S.C. § 103(a) be withdrawn.

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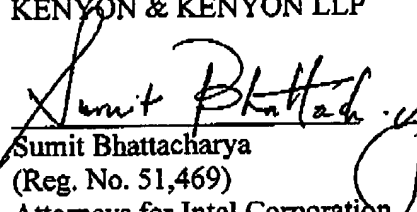Final Office Action dated November 1, 2006

For at least all the above reasons, the Applicants respectfully submit that this application

is in condition for allowance. A Notice of Allowance is earnestly solicited.

The Examiner is invited to contact the undersigned at (408) 975-7500 to discuss any

matter concerning this application. The Office is hereby authorized to charge any additional fees

or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to Deposit Account No. **11-0600**.

Respectfully submitted,
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